

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:14-CR-24

v.

HON. ROBERT HOLMES BELL

FREDERICK NEAL SMITH,

Defendant.

/

MEMORANDUM OPINION AND ORDER

Defendant Frederick Neal Smith has filed a motion for modification or reduction of sentence (ECF No. 25) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission.

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

At the time of sentencing, the recommended guideline range was 135-168 months based on a total offense level of 33 and a criminal history category of I. The Court, however, anticipating the proposed changes to Sentencing Guideline § 2D1.1, Amendment 782, sentenced below the 135-168 advisory guideline. Because the Court already varied and sentenced as if defendant had a total

offense level of 31 to reflect changes to USSC 2D1.1, Amendment 782, the Probation Office has now found Defendant ineligible for a reduction in sentence under Guideline Amendment 782. Defense counsel has filed a response to the report of eligibility, ECF No. 36, and concurs that Mr. Smith already received his two-level reduction at the time of sentencing.

Therefore, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (ECF No. 25) pursuant to 18 U.S.C. § 3582(c)(2) is DENIED.

Dated: January 15, 2015

/s/ Robert Holmes Bell

ROBERT HOLMES BELL

UNITED STATES DISTRICT JUDGE